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HIGHWAYS:

A

TREATISE,

SHEWING

The *Hardships* and *Inconveniencies*
of Presenting, or Indicting PARISHES,
TOWNS, &c. for not Repairing the
HIGHWAYS.

AND

Offering several material ADDITIONS, and
AMENDMENTS to the Laws now in Being,
for the better, and more effectual Repairing
of the same.

By JOHN SHAPLEIGH, Esq;
Barrister at Law.

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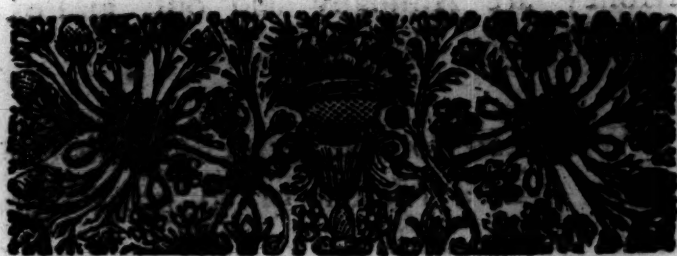
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HIGHWAYS:

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TREATISE,

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The Hardships, and Inconveniencies
of Presenting, or Indicting Parishes,
Towns, &c. for not Repairing the
Highways, &c.



THE Use and Importance
of this Treatise must ne-
cessarily be discerned by
all those, who consider of
what great Benefit and
Service it is to Mankind, to have the
Highways, and public Roads, within
this Kingdom, put into a good Condi-

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tion

tion of Repair ; and, what vast Sums of Money are Annually laid out, and expended upon that Account.

Who can forbear expressing his Surprise, that a Matter of so great Concern to the Public, as This is, should not have been hitherto thoroughly sifted, and discussed in the same, or the like Manner, in which I propose to manage the following Sheets? Who, I say, that has ever in the least considered what numberless Burthens, and Hardships, many Parishes are yearly obliged to sustain, in order to repair their Roads ; and what numerous Laws have been made, in order to compleat the doing of it?

For, it must be granted, that there has been always, and now is, great Reason to complain of the Neglect of the Repair of most Roads within this Kingdom ; and that it has been always found by Experience, that the many Laws, which have been hitherto made concerning their Repairs, have never met
with

with the desired Success.—Which Facts must, I think, afford sufficient Reasons for every considerate and judicious Person to conclude, that there still remains some fundamental Error in those Laws; and that a farther Regulation is still wanting, and needful.

The Attempt to find out this fundamental Mistake, and Defect in our Laws, has lately employed some of my leisure Hours; and I am thoroughly convinced, both by Experience and Reason, that the usual, and general Method now so much in Vogue, of permitting Parishes, Towns, &c. to be Presented, or Indicted for not Repairing of their Roads, is that fundamental Error, and Mistake, which hath greatly hindred and prevented all the Statute Laws, which have hitherto been made for the Repairing of public Roads from having their desired Effect.

For the Proof of which Assertion, I shall endeavour to shew, That Present-

ments, and Indictments for not Repairing the Roads, do not only manifest Injustice to many particular Persons, and are seldom, if ever, attended with such Success, as to procure the Roads to be put into good, and sufficient Repair; but also, that the Allowance of such Presentments and Indictments, is one chief Reason, why the manifold Laws, which have been made, in order to compel the Surveyors of the publick Roads to perform their respective Offices faithfully, are in a Manner become useless, and neglected.

The Method, which I shall take, in order to compleat this System, is,

First, To prove, that the Presenting, or Indicting of Parishes, Towns, &c. for not Repairing their public Roads, generally prove hard, and injurious to particular Persons, seldom, if ever, answer the intended Design, and cause the Laws, relating to the Surveyors of the Highways, to be greatly neglected; and, con-

consequently, that both these Prosecutions ought to be entirely taken away by an express Law.

Secondly, That the most just, and most effectual Way to have the public Roads kept in good and sufficient Repair, is, to oblige the Surveyors to do their Duty. And,

Thirdly, I shall offer, and submit some Amendments, and Additions to the Laws now in Being, which will more easily, and more effectually oblige the Surveyors to perform their respective Offices; and the Parishioners to do their six Days Work.

Now, in order to prove the First of these Propositions, I shall observe, That it appears by the Statute, 3 and 4 W. and M. Chap. 12. § 3. That the Surveyors for the public Roads may, by Law, be Men of mean Circumstances, and such Persons, as have no Manner of Property in the Parish, chargeable to the Repair

Repair of the Highways: For, by that Statute, the highest Qualification requisite for that Office is, 10 *l. per Annum*, real Estate, or 100 *l.* personal Estate.— But, by the same Act of Parliament, a Tenant of 30 *l. per Year*, may be appointed Surveyor; nay, if none can be found so qualified, then the Act of Parliament directs, that the most sufficient within the Parish are to be chosen; so that a Rack-Renter of 10 *l. per Annum*, or Men of lower Circumstances, are intitled to be chosen into, and may be obliged to execute this important Office.— And tho' such mean Persons, as are above describ'd, are chosen in the Office, yet, I believe, every Person will agree with me, that during their Year of Office, it is neither prudent, nor safe for the Rest of the Parishioners to repair the Roads under their own Directions, least their Officiousness should hereafter be used as an Argument of their Obligation to repair them in their own Right.— And also, it must be allowed me, that, as the Laws now are, the Parishioners

rishioners have not in themselves any coercive Power to oblige these mean Persons to discharge the Duty of their Office.

Suppose then, that such a Surveyor as has been just mentioned should, from mere Idleness, or Obstinacy, or from a Dislike to his Office, (which Supposition is often found too true to be thought chimerical) omit to repair the Roads, or to call out the Parishioners to do their six Days Work ; or to oblige those (when called out) who do attend, to work duly and honestly ; would it not in either of these Cases be very hard, and unjust, that for this Omission of the Surveyors, a Presentment, or Indictment should be put upon the Parish ? Because, in the Nature of such Prosecutions, no Distinction, or Difference can be made between Persons, and Things ; but the Innocent are equally punished with the Guilty ; and the Property of all such as are willing to work, and contribute their best Endeavours to put the Roads in Repair, is affected

affected in the same Manner, as the Properties of those who neglected, or refused to work, and were the principal Cause of the Roads not being put into good, and sufficient Repair.

But, if it be so great a Hardship and Injustice to punish promiscuously such innocent Inhabitants, as I have just now described, with the guilty ones, how much more aggravating, how much more shocking to common Sense and Justice must it be, to consider, that in such Cases, generally speaking, the innocent Inhabitants suffer the Punishment of the Surveyors Transgressions; and the Surveyors themselves undergo no Penalty, nor suffer any Punishment whatsoever? For, in many Places of this Kingdom, and particularly in the Western Counties of it, the Landlords of such Tenants as are at Rack-Rent, discharge all the Incumbrances; so that no Process, which can issue upon any such Presentment, or Indictment, can in any Shape affect the Surveyors Property.

Suppose

Suppose again, that the Surveyors of any Parish, should contribute some small Matter only out of their own Property towards the Parish Levies, or should happen to be such Tenants, as have all their Rates, Taxes, &c. paid and discharged by their Landlords, and live in a Parish, where the greatest Part of it is the Property of one, or two Persons, living at a great Distance from the Parish, and that those Surveyors, or one of them, should take a Disgust, or Prejudice to the Stewards of the Owners of such Lands, (which, considering the Insolence and Imperiousness of some Stewards, is no absurd, or improbable Supposition) and out of mere Pique and Revenge to such Stewards, should entirely neglect to do any Thing towards the Repair of the Roads within the Parish; would it not, in that Case, be the most unreasonable, and unjust Thing in the World, that the innocent Master should be punish'd by such expensive Proceedings, as Presentments, or Indictments for an Offence, which it was not in his Power, either to remedy,

remedy, or prevent ? And that this is not merely an imaginary Supposition must be known to all Persons, who have made their Observations on the State and Condition of Parishes, such especially, as lie any considerable Distance from great Towns.

But let us again suppose, and state the common Case ; namely, that the Surveyors do so much of their Duty, as duly to summons, and call out all such Parishioners, as are liable to do, and perform the six Days Work ; and only two, or three of the best, and most substantial House-holders and Land-owners within the Parish should obey the Summons ; and that by Means of the Surveyors Neglect to oblige the Rest of the Parishioners to do likewise their six Days Work, proceeding from Laziness, Unwillingness to do their Duty, or which is also very probable, from Bribery and Corruption, the Parish is Presented, or Indicted for want of having their Roads properly repaired ; will it not, in this Case,

Case, be doubly unreasonable and severe, that such of the Parishioners, as have done all the Law requires of them, and all they can by Law justify the doing towards such Repairs, should still be punished ten, perhaps twenty Times as much, as the other House-holders, Cottagers, or Labourers, who ought to have done their Work ; and as the Surveyors themselves, whose only Duty, and in whose Power alone it was to oblige them to perform it?

It is a Rule in Law, *Quod Actus Legis Nemini est damnosus*.—But this Method of proceeding against Parishes, Towns, &c. by Presentments, and Indictments, for not repairing the public Roads, is not only inconsistent with, but seems to be a direct Violation, and Infringment of that just and venerable Maxim. For, as the Law now stands, every Person having any Estate within the Parish, is liable to be punished for not repairing the Highways ; and yet the Law hath not given him proper, or sufficient Power to compel
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the Surveyors, and Defaulters to do their Duty, or contribute their Part towards the Repairs of the public Roads. — So that the Law, in this particular Instance, punishes Persons for not doing that, which it was not in their Power to perform; and thus it plainly appears, *Quod Actus Legis multis est damnosus*. — Which is such a Grievance, even in so momentous an Affair, as that of Repairing our public Roads, that there are great Hopes to believe, the Legislature will soon think proper to redress it.

Many more like Instances of Injustice done to particular Persons, might be here inserted; but as these seem so glaring and strong, as to want no further Illustration, the next Step, which I shall take, is to prove, that notwithstanding Presentments, or Indictments, are by much too often made, and preferred against Parishes, Towns, &c. for not repairing their Roads, to the great Grievance, Oppression, and Injury of many particular Persons, having Property with-

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in such Parishes, Towns, &c. yet, that such Proceedings do very seldom, if ever, answer the End intended by them; and then I shall give the true Reasons, why they do not succeed.

As to the Truth of the Assertion, that such Prosecutions seldom, if ever, do answer the desired End, I need only refer to Experience, which is the surest Knowledge we can obtain. For, does not every Person observe, that there are some Parishes, which have Presentments, or Indictments, almost perpetually hanging over their Heads? Now this could not possibly be the Case, if these Prosecutions were so effectual for the Repair of Roads, as some Persons, who are fond of Power do often strenuously, tho' erroneously insist upon.

The Fact being then beyond the Power of Contradiction true, I shall in the next Place shew, that from the Reason and Nature of such Prosecutions, as Presentments and Indictments are, no
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good Effect can possibly be expected from them, as to the Public in general, or to any private Persons in particular, except Lawyers, and Officers attending the Courts of Justice. For it must be considered, that the Generality of the Surveyors of the public Roads, being, as I have before observed, low, and mean Persons, their Payments towards the Fine set upon the Parish, Town, &c. by Virtue of such Presentments, or Indictments, is either nothing, or else so small and trifling, as to have very little Effect upon them; especially, if it be considered, that they are sure to have the laying out of this Money; which they often do more to their own Benefit, than to the Improvement of the Roads.

Besides, it ought to be well considered, that, as by Law such Parts of the Road as are out of Repair must be particularly specified in the Body of the Presentment, or Indictment, these Prosecutions are chiefly carried on, in order to oblige Parishes to repair such Parts of their

their Roads, as then happen to be worse than the Rest; and consequently, are not generally intended to work a thorough Reformation, and Repair through the whole Parish.

But again, these Prosecutions are often made, and preferred against Parishes, Towns, &c. in the Winter, and other very unseasonable Times of the Year; which can have no Effect towards obliging the Parishes to do their six Days Work, (which, when duly performed, would be sufficient for the Repair of most public Roads) but only to compel the Parish, to lay out Money to their great Grievance, in order to repair such Roads as happen then to be complained of; and that with five Times more Expence, than what would suffice at a seasonable Time of the Year.

Let it be also seriously considered, what real Good, what Use can be derived from such Prosecutions, but the expensive Repairs of such Places, as happen just then to be out of Repair. For, in respect to

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the reforming the Inclinations of the Parishioners in general ; or, to the making them more forward for the future to repair their Roads these grievous Prosecutions cannot possibly have any Effect. For, as the whole and sole Power of repairing the Roads, was by Law conferred on the Surveyors, before the Commencement of such Prosecution ; so does it still rest there, notwithstanding the Prosecution ; and therefore, as the Parishioners, before the Prosecution, could not safely repair the Roads without the Concurrence of the Surveyors ; so neither can they do it, after the Prosecution is begun, or ended. And can any Man in his Senses think, that such Prosecutions will make the Surveyors more diligent than they were before ; when, as I have already proved, they are seldom one Penny out of Pocket by all the Presentments, or Indictments, which the Power of the Law can throw upon the Parishes, Towns, &c. for which they are Surveyors ? — Nay, it is well, if they are not rather pleased than displeased with such sort of Prosecutions.

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This Argument, I must own, carries great Weight with me against the Allowance of any such Prosecutions; and I verily believe, all considerate and disinterested Persons must entertain the same Opinion of it with myself.

But the Vexation, Oppression, Expence, and Uselessness of these Prosecutions, cannot seem to be the only Reasons (tho' very urgent ones, they must certainly be allowed to be) for laying them aside entirely, to those, who consider also, that the Justices of Peace would certainly be more willing, earnest, and ready to hear such Complaints as are to be made against the Surveyors and Defaulters, and to enforce the Laws against them, if they were restrained from exercising this favourite Power of punishing all the Parishioners promiscuously, by way of Presentment, which most of them at present are apt to think their safest, and most easy Remedy. — And the rest of Mankind would be more diligent in making such Complaints of the Surveyors, and Defaulters to the Justices of

Peace, in Case they found they had no other Redress; and that the Justices of Peace were more ready to give an attentive Ear to such Complaints.

I hope, I have now fully shewn, that the Method of Presenting, or Indicting of Parishes, Towns, &c. for not repairing their Roads, generally proves hard, and injurious to particular Persons; that such Prosecutions seldom, if ever, answer their intended Design; and that they are the chief Reasons, why the Laws obliging the Surveyors to do their Duty are not better enforced. — The natural Inference from all which is, that these, and all other Prosecutions of the like Nature, ought to be taken away intirely.—But in what Manner, and of the proper Remedies to be substituted in their room, I shall defer the discussing of, until I come to treat on the last Head: For,

I shall now proceed to the second Thing proposed, which is to shew, that the most just, and most effectual Way to have the Roads kept in good and sufficient Repair, is, to oblige the Surveyors to do
their

their Duty, and to perform their respective Offices.

For the Proof of this, it must be observed, that the Method proposed by the Laws for repairing the Roads, is, for the Surveyors to appoint six Days in the Year for all the Householders, Labourers, (not being hired Servants) and Cottagers, to work in the Amendment of the Highways.— And, I believe, it will be granted, that in case these six Days work were punctually performed, according to the Intention of the Law, that this Method would be sufficient for Repairing of most of the public Roads within every Parish of this Kingdom; and where ever it shall happen to be otherwise, the Statutes 3 and 4 of *W. and M.* and 1 *George I.* have given Power to the general Quarter Sessions, to make a Rate for that Purpose, not exceeding 6 *d.* in the Pound for one Year.— If then the due Observation of the above Methods would effectually repair most of our public Roads, whenever they are out of Repair; it must always (unless in the Case of uncommon Floods,

Frosts, and the like) happen through the Default of the Surveyors, or of the Whole, or particular Inhabitants within the Parish.—And if the Laws now in being have armed the Justices of Peace, and the Surveyors, with a sufficient Power to punish each Delinquent according to the Degree, and Nature of his Office, then the following this Method of punishing the Surveyors, or the Inhabitants separately, according to the Nature and Degree of their respective Offences, must be just, and equitable, and the most effectual Way to obtain the desired End.

Now, in order to prove, that the Justices of Peace, and the Surveyors, have a sufficient Power to punish every Person offending against the Laws made for the Repair of the public Roads, I must observe, that by the Statute 5 *Eliz.* Chap. 13. § 8. it is enacted, that the Surveyors, under Pain of 40s. shall within one Month after any Person has omitted to do his Days work, present the Offence to the next Justice of Peace, which Justice shall certify that Presentment at the
next

next general Quarter-Sessions of the Peace, which Sessions shall immediately inquire of such Default, and assess such Fine for it, as they, or any Two of them shall think meet.

Supposing then, this Statute stands unrepealed, no Method, more easy, or more safe for the Justices of Peace to act under, can well be devised.—For as to the Easiness of this Method of proceeding, the Surveyors have nothing to do, but to present the Defaulters to the next Justice of Peace, who is to certify that Presentment to the next general Quarter-Sessions, which Sessions is to examine, and to enquire into the Complaint.—And when the Defaulters are found guilty, the Statute 2 and 3 *Philip and Mary*, hath inflicted such a Penalty on them, as is double the Value of their neglected Labour.

And as to the Safety of this Method, I don't know, in what Instances the Justices of Peace can act with more Safety than in this Case.—For, in respect to the

Punishment of the Defaulters, the Justice of Peace, to whom the Complaint is made, does only a ministerial Act, by certifying the Surveyors Presentment to the next general Quarter-Sessions; and as the Punishment inflicted on the Defaulters is to be the Act of the Court of Sessions, there never was, I think, any Pretence made by the Justices of Peace of any Danger, or Inconvenience, that ever did, or possibly can attend their acting in that Capacity.

Having now, I hope, not only shewn, that the Laws now in Being, have empowered the Justices of Peace sufficiently to punish the Defaulters for the Neglect of their Duty in regard to the Repair of the public Roads; and the Surveyors, for neglecting to present such Offenders; but also, that the Statute 5 *Eliz.* has chalked out an easy, and a safe Method for the Justice of Peace to proceed in; I shall next go on to shew, and prove, that this Method of punishing the Surveyors for neglecting to present the Defaulters; and of punishing the Defaulters,
for

for omitting to do their six Days work, is a just, and equitable Method, and the most effectual to obtain the End desired.

As to its being a just, and equitable Method, I shall first observe, that as Equality is the highest Equity ; so each Delinquent is by this Means punished, according to the Assistance, which he ought, but neglected to give towards the Repair of the Roads.—By this Way of proceeding, the Land-Owners, and the rest of the Parishioners, are not all promiscuously punished, without making any distinction between those, who either have, or else were willing to obey the directions of the Law, from those, who either have neglected, or else refused to observe its Orders.—By this Way, the Surveyors are not capable of triumphing, nor of benefiting themselves by their own Neglect, or open Defiance of the Law ; but the Scales of Justice are equally balanced ; and the innocent, and faithful Observers of the Laws are exempted from that Punishment, which is with a
just,

just, and distinguishing Hand inflicted on each of the Offenders, with that Equality, and prudent Distinction, which both the Laws of this Land, and the Rules of common Justice demand and require.

But it is incumbent on me, according to my Proposal, not only to prove, that this is the most just, but also the most effectual Way to obtain the desired End.—And, though I could offer many Reasons on this Head, yet as this one, which I shall give, seems to me to be an unanswerable one, I shall not trouble the Reader with any other on this Point.—And it is this.—Since the Law has appointed proper Officers to take care of the Repair of the Roads, that Method must certainly be the most effectual, which has the greatest Power and Influence; and is the most capable of compelling these Officers to do their Duty, and take proper, and effectual Care to see the Roads kept in good and sufficient Repair.—But I have already shewn, that Presentments, or Indictments do affect but very few of such Surveyors; and that in general, such Pro-
secutions

secutions are rather beneficial, than otherwise to them.—Whereas, on the other Hand, by the Statute 5 *Eliz.* they are liable to be punished Forty Shillings, *Toties Quoties*, they offend in not presenting the Defaulters; and by the Statute 1 *George I.* they are, for most Instances of Neglect in their Duty, liable to pay Five Pounds, to be levied by Distress and Sale of their Goods on a proper Conviction.—As this last Method, therefore, is the most coercive, and indeed the only effectual one to oblige the Surveyors to do their Duty, I conceive, there cannot be the least Doubt, but that it is by much the most effectual Way to have the Roads put into, and continued in a good and proper Repair.

Having now gone through the two first Propositions, I shall humbly presume to offer some Amendments, and Additions to the Laws now in Being, in respect to the more easy, and more effectual obliging the Surveyors to perform their Duty, and the Parishioners to do their six Days work. For as to all the other

other Laws, which have been made for the better regulating, and repairing of the public Roads, I design not to meddle with any of them in this present Treatise.

And in the first Place, I would observe, that tho' I have, for Arguments sake, asserted, that by the Statute 5 *Eliz.* Chap. 13. § 8. an easy, and safe Method is chalked out for the Justices of Peace to punish the Surveyors, and for the Surveyors to oblige the Parishioners to perform their six Days work, or procure the Defaulters to be punished; yet, I can take upon me to say, both from Observation, and Experience, that the Justices of Peace are very unwilling to proceed according to the Methods prescribed by this Act; and their Caution seems to me to be in some Measure justifiable; for, by Statute 22 *Car.* II. Chap. 12. § 9. The Complaint of Defaulters to the public Roads is to be made to the next Justices of Peace, who are required, on Oath of one Witness, to levy the Penalties.—And in the 12th Sect. of the same Act,

Act, the Method directed to be observed, and taken in punishing Offenders, is the same as was before directed to be taken by the said Act of the 5 *Eliz.*—And as this Act 22 *Car.* II. is subsequent to that of the Statute 5 *Eliz.* and these Two Clauses seem to be diametrically opposite to each other, it may be difficult to determined which is the best, or safest Method to be followed.

And again, by the Statute 3 and 4 *W.* and *M.* Chap. 12. § 9. all Offences, and Neglects, respecting the public Roads, are to be presented by the Surveyor, on his Oath, to some Justice of Peace of the same Division, if any Resident there, and if not, then to some neighbouring Justice.—But this Act does not direct what the Justice shall do with the Presentment; nor can any one conclude, that he ought to certify it to the next general Quarter-Sessions of the Peace; but only from its being said, in the 2d Sect. of that Act, that all the former Laws relating to the Highways, shall be executed according to the Tenour of these Laws.

Besides,

Besides, the Statute 1 *George I.* is so worded, that it may seem doubtful, whether the Directions given by the said former Acts, in regard to these Points, are not thereby repealed; and the Jurisdiction vested in the special Sessions.

From hence it may be easily discerned, that the making so many vague, and seemingly inconsistent Laws on this Head, hath tended much to the weakning, instead of the strengthening the Power of the Justices of Peace; and hath so perplexed their Thoughts, that they care not to act under them; which Perplexity, and Doubt, occasioned by these Laws, have, I am well persuaded, been a main Cause, why both the Surveyors, and the Defaulters to the Highways, do so often go unpunished.

And yet, when the great Inconveniences and Hardships of prosecuting Parishes, Towns, &c. for not repairing the public Roads comes to be duly considered by the Justices of Peace, and that such Prosecutions, very seldom, if ever,
procure

procure the Roads to be effectually mended, or thereby put into good, and sufficient Repair, I don't well see, how they can excuse themselves, for not preferring the Methods chalked out by the several Acts of Parliament now in Being, for punishing the Surveyors, and the Defaulters, to such unequal, and ineffectual Prosecutions, as Presentments, and Indictments are: For, altho' I have just now shewn, that the several Acts of Parliament relating thereto, are not so clear, and explicit, as could be wished; nor do they administer so speedy a Remedy, and Redress, as the Nature of the Grievance seems to require; yet, if they would condescend to proceed, either according to the Directions of the Statute 5 *Eliz.* or of the ninth Clause of the Statute 22 *Car. H.* Chap. 12. at a special Sessions (for, altho' that Clause does not expressly direct the Justices of Peace to proceed at a special Sessions; yet, as the Words are in the plural Number, *viz.* "To make Complaint to the next Justices of the Peace," they may undoubtedly receive the Complaint, and proceed upon it

it at a special Sessions) and in so doing, must, I think, tread on sure and safe Ground. And altho' these are but flow Ways of proceeding, (as I shall hereafter observe, upon the Statute 5 *Eliz.* and must here observe, on the said ninth Clause of the Statute 22 *Car. II.* Chap. 12. because the Justices of Peace are not bound to hold a special Sessions above once in four Months ; yet, I say, as both these Methods are just, and equitable, they certainly must be allowed to be highly preferable to Presentments, or Indictments ; because, such Prosecutions are not only ineffectual, for the Reasons before offered, but are also highly unjust, and oppressive in most Instances, as I have already shewn.

But, in order to prevent all future Doubts ; and that the Justices of Peace, as well as all other Persons, may hereafter know how to act with Safety, Expedition, and Effect, I have here taken the Liberty to recommend it to the Wisdom of the Legislature, to make new Laws on this Head, as clearly expressed

as

as is possible for Words to make them,
and as easily to be executed, as the art of
man can contrive.

Suppose then, a new Law should be
made in a clear, and proper legal Form,
to the effect following, *viz.* 'That all
' Householders whomsoever by themselves,
' or one sufficient Labourer; all Labour-
' ers able to work (not being hired Ser-
' vants by the year) and all Cottagers able
' to work, shall yearly be liable, to work
' six Days in the Year in the Amendment
' of the Highways; that the Surveyors
' may summons, or call them out joint-
' ly, or separately, as they shall think
' most proper and convenient, so as no
' one Person be called out in the same
' Year oftener than another, living in the
' same Parish; and, if it should happen to
' fall out otherwise in one Year, that in
' the next Year, those, who went out most
' the former year, should be the last call-
' ed out in this; so that every such
' Householder, Labourer, and Cottager,
' may bear an equal Share, and Propor-
' tion. — That the Surveyors be obliged

' to give Notice of each Days intended
 ' Work, at least one Week before the
 ' appointed Day.—That this Notice spe-
 ' cify the Names of such Persons as are to
 ' work on the Roads, in case the Parish-
 ' oners are called out separately; and,
 ' that the Notice be delivered by the Sur-
 ' veyors to the Parish Clerk, or some
 ' other Officer of every religious Assembly
 ' within the Parish, Town, &c. which
 ' Clerk, or other Person, shall be obliged,
 ' under a Penalty of 40s. to publish it
 ' gratis in the Church-yard; or such o-
 ' ther most convenient and public Place,
 ' immediately after their respective Wor-
 ' ship is ended, on the next Sabbath
 ' Day after it is delivered to them; or,
 ' if delivered to them on a Sunday, before
 ' the Beginning of the Divine Service,
 ' whether Morning, or Evening Service,
 ' then such Clerk, or other Person, shall
 ' publish the same Notice, or Summons,
 ' in Manner as aforesaid, upon the same
 ' Sunday, on which it was delivered, im-
 ' mediately after such Divine Service is
 ' ended; and in case of any such Com-
 ' plaint made by the Surveyors, to one,
 or

or more neighbouring Justices of the
 Peace of Defaulters to the six Days
 work, such Clerk, or other Person,
 shall be obliged, under the like Penalty
 of 40 s. to attend the Justice, or Ju-
 stices of Peace, being first duly sum-
 moned, in order to prove the said No-
 tice against such Persons, as shall be
 informed against for being Defaulters,
 and shall have so much for their Trou-
 ble, and Expence of Attendance, in or-
 der to prove the same, as the Justice, or
 Justices of Peace, before whom such
 Complaint is made, shall think fit to
 order the Surveyors to pay them.—It
 should also be provided, in express
 Terms, that every Person so called out
 to work at the Repairs of the public
 Roads, do work diligently and quietly
 for the Space of eight Hours each Day,
 at their own Expence, both of Tools,
 and Provisions of all Sorts.—And that,
 in case of Persons refusing, or neglect-
 ing to come out to work, or refusing or
 neglecting to work diligently, and quiet-
 ly, for the full Space of the said eight
 Hours, all Surveyors should be obliged
 (under a Penalty of 40 s. to be recover-

' ed before any one neighbouring Justice,
 ' of the Peace, on the Testimony of one
 ' credible Witness, one Moiety to go to
 ' the Informer, and the other Moiety to
 ' be applied by the other Surveyors not
 ' offending, or by such other Person, as
 ' the said Justice shall appoint, towards
 ' the Repair of the Roads in the respec-
 ' tive Parishes, where the Offence was
 ' committed, which Penalty of 40s. is
 ' to be levied for every single Offence,
 ' *Toties Quoties* they shall offend.) To
 ' make Complaint of every such Offence,
 ' within three Days next after the Offence
 ' is committed, to some neighbouring
 ' Justice of the Peace, which Justice of
 ' the Peace should be required, under a
 ' Penalty of 10l. to summons forthwith
 ' the said Offenders, and to proceed to
 ' the hearing of the said Complaints, and
 ' to convict each Person so offending
 ' in the Penalty of *per* Day for not
 ' coming out, or refusing, or neglecting
 ' to work, when come out, towards the
 ' Repair of the Highways; if the Sum-
 ' mons in case of a Default, and the De-
 ' fault itself be well and sufficiently proved
 ' by

' by the Testimony of one credible Wit-
 ' ness; which every Inhabitant within
 ' the said Parish, not otherwise disquali-
 ' fied by Law, shall be deemed to be in
 ' the Cases aforesaid; and so likewise the
 ' coming out, and neglecting, or refusing
 ' to work, to be proved by the like Testi-
 ' mony.—All which Penalties of the De-
 ' faulters to be applied towards the Re-
 ' pair of the public Roads within that Pa-
 ' rish, and to be levied by Distress, &c.—
 ' And in case the Parishioners have not al-
 ' ready performed all their six Days work,
 ' or have not been fined for their Ne-
 ' glect, it should be lawful for any one
 ' neighbouring Justice of the Peace,
 ' yearly, from *Lady-Day* to *St. Luke's*
 ' Day, to give Orders in Writing, signed
 ' by him to Surveyors of the Highways,
 ' to summons, and call out the Inhabi-
 ' tants (liable by Law thereto) to the
 ' Repairs of the Roads, and in case the
 ' Surveyors shall omit to summons, or
 ' call out the proper Inhabitants (not less
 ' than ten to every Days work, if so
 ' many in the Parish are liable to work)
 ' in the Manner herein before-mentioned,

' to work in the Amendment of the
 ' Highways, within the Space of ten
 ' Days after such Orders delivered to
 ' the Surveyors; or, in case the Surveyors
 ' shall summon out a proper Number of
 ' Persons within the said Time; but shall
 ' neglect, or refuse to attend themselves,
 ' or to present the Defaulters, or those
 ' who refuse, or neglect to work, in
 ' the Manner aforesaid; in every such
 ' Case, and for every such Offence, the
 ' Justice of Peace, giving such Orders,
 ' may, and shall convict the Surveyors in
 ' the several Penalties of 40 s. each;
 ' which Summons shall be proved by the
 ' Testimony of one such credible Witness
 ' as aforesaid; but the Surveyors, omitting
 ' to summons the Inhabitants, shall be
 ' deemed to be duly proved, unless they
 ' can prove by one such credible Witness
 ' as aforesaid, the Delivery of the Sum-
 ' mons in Writing to the Parish Clerk,
 ' or such other Officer as aforesaid.—And
 ' in case such Proof shall be made by the
 ' Surveyors of the Delivery of such Sum-
 ' mons as aforesaid, to the Parish Clerk,
 ' or such other Officer as aforesaid, and
 ' the

' the Parish Clerk, and such other Per-
 ' son, who received the Summons ne-
 ' glected, or refused to publish the same
 ' in Manner as aforesaid, he should for-
 ' feit the like Penalty of 40 s. for every
 ' such Offence, upon Conviction in Man-
 ' ner aforesaid before the Justice, who
 ' gave such Orders.—But, as to the Proof
 ' of the Surveyors not duly attending for
 ' the Space of the eight Hours, or of
 ' their not presenting to a neighbouring
 ' Justice of Peace all such Persons, as
 ' made Default, or refused to work in
 ' the Manner above-mentioned, the same
 ' to be made upon Oath by one credible
 ' Witness of the same, or any other Pa-
 ' rish;—the Penalties aforesaid to be
 ' levied by Distress, &c.—And, in order
 ' to render the Proceedings hereon as
 ' effectual as is possible, it should be or-
 ' dered, that where it is practicable, all
 ' these Complaints shall be made before
 ' the same Justice of Peace, who gave
 ' the Surveyors Orders to make out such
 ' Summons to the Parishioners.—And,
 ' if that is not practicable, then before
 ' any other neighbouring Justice of the

' Peace.—And as any neighbouring Ju-
 ' stice of Peace may make out such an
 ' Order, *ex Officio*, so under a Penalty of
 ' 10*l.* *Toties Quoties* he offend, should
 ' be obliged, within the Space of three
 ' Days, to make out such an Order to
 ' the Surveyors, on the Application of any
 ' Parishioner, who has any real, or chattle
 ' Estate within the Parish; or, on the
 ' Application of any other Person whom-
 ' soever living in, or out of the said Pa-
 ' rish, provided such Person, whether Pa-
 ' rishioner, or not, does first make Oath
 ' in Writing before such Justice of the
 ' Peace, of the Roads being out of Re-
 ' pair, and specify in the said Oath, in
 ' what Part of the Parish, the Repairs
 ' are wanting; and provided also, no
 ' prior Orders for a Summons have been
 ' issued to the said Surveyors by the same,
 ' or any other neighbouring Justice of the
 ' Peace, for the Repair of the same Roads.
 ' —And that it be not in full Time of
 ' Hay, or Corn-Harvest within that Parish.

And lastly, I should recommend it to
 the Legislature to have it enacted, and
 expressed,

expressed, 'that seeing the Method, which
 ' has been hitherto followed of Presenting
 ' and Indicting of Parishes, Towns, &c.
 ' for not repairing their public Roads,
 ' does generally prove hard and injurious
 ' to particular Persons, and has been fel-
 ' dom, if ever, found to answer the de-
 ' sired End; and, there is great Reason
 ' to believe, that the Justices of Peace,
 ' and other Persons, generally prefer the
 ' Methods of Proceeding against Parishes,
 ' Towns, &c. by these Prosecutions to
 ' the other Methods of enforcing the Laws
 ' against the Surveyors, as thinking the
 ' former Methods to be the most speedy
 ' and effectual Means of obliging the Pa-
 ' rishes, Towns, &c. to repair their
 ' Roads; and consequently, very much
 ' neglect and slight the other Methods
 ' prescribed by many Laws, which have
 ' been made for punishing the Surveyors
 ' for the Neglect of their Duty; that
 ' therefore, from henceforth, all such
 ' Proceedings by Presentments, and In-
 ' dictments, shall intirely cease; and no
 ' such Prosecutions shall hereafter be com-
 ' menced, or carried on, on any Account,
 ' or

‘or for any Reason, or under any Pre-
tence whatsoever.’

Having now pointed out the particular Regulations, which seem to me proper to be made; the next Thing which I shall attempt, is, to give my Reasons for several Clauses and Articles here inserted.

I would have the Words, whereby the Householders, &c. are ordered to work in the Amendment of the public Roads, be as comprehensive and explicit, as possible; because I have found great Disturbances made in Respect to the Householders, intended by the Statute 2 and 3 of *Philip and Mary*; for, tho’ it seems to me, to be clearly intended by the Legislature, that all Persons whomsoever, who are Householders, should go out themselves, or send a sufficient Labourer, be they Clergy, the King’s Officers, Women, or the like; yet it is certain, that in some Places, many Persons think themselves exempted; and are not satisfied with being told, that they are not obliged to attend in Person, but may send out a sufficient Labourer

Labourer to work for them.—And I have by Experience found, that in large populous Parishes, Towns, &c. the summoning out the whole Parish at once, is a very unprofitable Scheme.—Because, it is impossible for the Surveyors to give a due Attendance to them all; and, being compelled to work upon an unwilling Task, they are much more prone to encourage each other to be idle than industrious.—Wherefore, it seems highly expedient, that the Surveyors should have a clear, discretionary Power lodged in them, of calling out such Numbers only at once, as they can well manage and controul.—And by the latter Part of this Clause, I hope, sufficient Care is taken, that it shall not be in the Power of any Surveyors to make an improper Use of it.

As to the Methods herein prescribed, in order to give due Notice to all such Parishioners, as shall be obliged to attend the Repair of the Roads, I believe, they will be judged proper by all such as shall consider, how imperfect the Laws in being are in that Respect.—And how unwilling,

willing, and how properly cautious the Justices of Peace are in proceeding upon the usual Notice given in the Church, or Church-yards; because, it is well known, that since the Toleration, which has been most prudently and candidly granted to religious assemblies, there are so many Persons, who resort to other Assemblies of Divine Worship, besides the established Church, that in many numerous Parishes, Towns, &c. it is by much too strong a Presumption to suppose, that the Notice given in our established Churches, or Church-yards, after Divine Service, must necessarily have come to the Knowledge of all Persons inhabiting within the same Parish, or Town, &c.—And as to the giving a Week's Notice of the going out to work on the Roads, such a seasonable Warning seems to me to be very just and rational, in order, that the Persons, who are summoned, may have such proper Time to manage their own private Affairs, that their Attendance on the public Service may not prove so inconvenient to them, as it must oftentimes happen in the Case of a shorter Notice.

And,

And,

And, although the compelling the Parish-Clerk, or other Person officiating in every public Assembly of religious Worship, to give Notice *gratis*, and also to attend the Summons of the Surveyors, in order to prove the Notice given to the Parishioners before the Justice of Peace be quite a new Scheme; yet I flatter myself, it will be thought a good one, when I aver, that, from my own Experience, the Clerks, &c. have refused to do this very small Office for the Parish, and the Public, without being extravagantly paid for it.—And when I affirm, that I have known many a well-intended Prosecution against the Defaulters, to have failed, merely upon the Account of the Difficulty there has been found, to procure sufficient Evidence to attend the Justices of Peace, in order to prove the Summons in a legal Form.

The Reason, why I have taken the Liberty to recommend it to the Legislature, that the Housholders, &c. should be obliged, by the strictest Expressions, to work diligently, and quietly, during the
eight

eight Hours, is, because I can, from my own Observation and Experience, affirm, that most of the Housholders, especially those, who have no real, or Chattle-Estates in the Parish, as well as the Labourers, and Cottagers, look upon this, as a very severe Law inflicted on them.

For, very few of them have Sagacity and Penetration enough to discern, that as the Repairing of the public Roads is for the good of Society in general, so they, as Members of that Society, must consequently receive a Share of that Benefit.—Nay, most of them are of such narrow and selfish Principles, that they will not by any Means be persuaded, but what the Rich only have any Benefit by this Labour; and, that this Law is imposed on them by the Richer, and more powerful Members of the Society, to their real Loss and Detriment; and to the sole Advantage of the Richer, and better Sort of Mankind.—For which Reason, you can scarce ever persuade them, but that every Day they work on these Roads, is an absolute Loss to themselves,

selves, and their Families.—And therefore, they generally complain greatly, not only, that they are obliged to work, but also to find their own Tools and Provision.

Certainly, the obliging the Surveyors to make Complaint to the neighbouring Justice of Peace, of the Defaulters; or of those, who coming out refuse to work, within three Days after such Offences are committed, must be thought to be a very proper and prudent Law; when it is duly considered, that the Delay, which is occasioned necessarily by the Laws now in being, is the chief Reason, why the most diligent Surveyors have not hitherto been able to repair the Roads effectually.

As for Instance, suppose a Complaint to be made by the Surveyors according to the Directions of the Statute 5 Eliz. Chap. 13. § 8. in that Case, the Surveyor is ordered, within one Month after the Offence committed, to present it to the next Justice of Peace, who is to certify it to the next general Quarter-Sessions of the Peace; which Sessions shall immediately

mediately inquire of such Default.—Now, it must be known, that notwithstanding the seeming Efficacy of the Word *immediately*; yet, the general Construction, that has been put upon this Clause of the Statute, and which almost universally prevails, is, that the Certificate of the Justice of Peace, in this Case, hath not the Effect of a Presentment, but must be turned into an Indictment; to which, by the Rules of Law, the Party may enter his Traverse; so, that it cannot be tried, until the second Sessions at the soonest.

Suppose then for Example, twenty or thirty Persons, should be summoned to work at the Repairs of the Highways the Week after *Easter*-Sessions, and they all, or the most Part of them, make Default, or refuse to work, when they are out; the only Method that can be taken by the Surveyors, under this Law, is to present the Defaulters to the next Justice of Peace, who is to certify it to the next general Quarter-Sessions of the Peace, that is, the Summer Sessions, following;

lowing ; when these Delinquents are to be indicted, and perhaps may (for sooner they can't well) be sued at the next *Christmas* Sessions ; by which Delay, the whole Summer is lost, and nothing done towards the Repair of the Roads.—For, as the Offenders don't find any immediate Punishment fall upon them, they will most probably, and generally do, continue obstinate during the whole Summer ; and the rest of the Parishioners, who are willing to work in concert with their fellow-Parishioners, finding, that the Persons complained of will not come out to work, and yet no immediate Punishment inflicted upon them, are by their Impunity, and Example, encouraged to be as neglectful as the rest.—From whence it naturally and necessarily follows, that the Repairing of the Roads is neglected from Year to Year.—And, I really take this to be one of the greatest Defects in the Laws relating to the public Roads.

Nor, is the Matter much mended, if it should be the Opinion of the Legislature,
D that

that the Justices of Peace ought to proceed on the Statute 1 *George* I. and not on the Statute 5 *Eliz.* — Because, in that Case, the Justices of Peace are not bound to hold their special Sessions, to take Conusance of the Roads above three Times in a Year, which is, by much too dilatory a Proceeding, to give sufficient Life and Spirit to a Matter of this Nature and Importance.

Besides, if the Proceedings are to be carried on according to the Statute 5 *Eliz.* will not the Expence, attending, the Prosecution of such Indictments, be a great Clog and Discouragement to Complaints of this Kind?

These, or such like Regulations must therefore be certainly much wanted; and, I hope, by the Method now proposed, it will be thought, that I have found out a proper Scheme, so as to prevent particular Persons in a Parish from being unreasonably, and unjustly grieved; and at the same Time, to repair the public Roads in a more effectual, and a more speedy

speedy Manner than they ever have been, or can naturally be supposed to be accomplished by a Presentment, or Indictment. —For, as I have already observed, both these Prosecutions (besides the Grievances and Hardships attending them, which I have already explained) must be slow, and dilatory Remedies; whereas, nothing, I think, can be more speedy, more equal, or more effectual, than what is now proposed. —Nor can any Justices of Peace think their Power over the Roads to be abridged by such a Regulation of the Laws for Repairing the Highways, as is hereby proposed; because, in Fact, it is enlarged by it. —For, whereas by the Laws now in being, any private Person, may procure Indictments to be found almost with as much Ease as the Justices of Peace can lodge their Presentments; and, whereas the Force of an Indictment, in respect to Roads, which are indisputably to be repaired by the Parish, is very near in Effect as powerful, and as grievous, as a Presentment; for what Parishes can say their Roads are in a strict legal Repair? Now, by this Model, that Power is in-

tirely taken away from private Persons; and the whole coercive Jurisdiction over those who are to repair them, and also, over those who are by Law appointed to see that others repair them, is lodged in the Justices of Peace.

I have not the Vanity to think, that I have herein proposed such a Scheme as is perfect; or, incapable of Addition, or Alteration; but I am much inclined to believe, that, if the principal Plan here sketched out shall be reduced into a Law, with such proper Improvements, as the Wisdom of the Legislature shall think proper to make, we shall soon find our Roads much improved by it; and the Public freed from many oppressive, and expensive Hardships, which have hitherto fallen upon them by the unjust, and as I hope, I have now sufficiently proved, pernicious Practice of Presentments, and Indictments, in which I must also include Informations, because, they fall under the same Considerations, and are liable to the like Inconveniencies.

But

But before I close this Treatise, I must endeavour to answer some Objections, which are usually made by those, who are great Encouragers and Promoters of Presentments, and Indictments.— For, say they, it is true, even to a Proverb, that the worst Roads are generally near the House of a Justice of Peace; or in Parishes, where he hath the largest Share of Property; and, if he is willing for his own Interest, or from any other Motive, to decline putting the Laws for repairing the Highways in Execution, or to excuse the Persons, who ought to repair them, is that any Reason, why the Public should suffer; or not have another Remedy to punish the Offenders, and oblige the Parish to put their Roads into good and sufficient Repair? And indeed, as the Laws now stand, there may be sometimes too much Reason for arguing in this Manner.—And it is to be feared, that the Complaint may, in some Instances, have been too well founded; but, this Objection is intirely taken off;

off, and the Question is easily answered by the present Scheme.

For, if the Complaint be well founded, and the Roads are really in bad Repair, the Persons thinking themselves aggrieved, may repair to the Justices of Peace, living within the same Parish; or to any other neighbouring Justice of the Peace, who is obliged, under 10 *l.* Penalty, *Toties Quoties* he offends, to give Orders to the Surveyors to call out the Parishioners forthwith to repair the Roads. — And this I conceive will be a sufficient Guard, and Security against any Neglect, or Partiality in the Justice of Peace, when so great a Penalty hangs over his Head,

But it may be further objected, that the Badness of the Roads, which they complain of, mostly happens to be in the Winter, when the Justices of Peace have no Power to order the Surveyors to summons, or call out the Parishioners to work in the Amendment of the Highways; and when the Surveyors themselves

selves are not obliged, nor authorized by Law to call them out.—To which I would answer, that although this Inconvenience may possibly happen for some short Time, after the making such a Law, as is now proposed, yet I am well persuaded, that within two or three Years after, at the most, the Roads will be so well repaired in most Parishes in the Summer-Time, as seldom, if ever, to prove bad in the Winter; and, when the Roads are broken up by excessive Rains, hard Frosts, or other casual, unforeseen Accidents; it is but charitable and humane, to be as easy, and forbearing in such a Case, as is possible.—And, I am sure, Presentments, or Indictments carry no Materials about them, to enable the Parishioners to amend them directly.

Besides, I shall presently shew, that on such emergent Occasions, the Surveyors may be vested with sufficient Power and Authority to repair the Roads; and the Method thereby proposed, will, I am persuaded, be surer,

more expeditious, and more effectual, than persecuting the Parish by Presentments, or Indictments; which I have already shewn, are seldom, if ever, attended with the desired Effect.—But before I proceed on this Head, it will be necessary to take notice of another Objection, which is too material to be passed by unanswered.

By this Scheme, it seems to be taken for granted, that the due Performance of the six Days Work will suffice for the proper Repair of all public Roads; which Experience shews, is not sufficient in Parishes, where there are many Roads, and but few Inhabitants; or where the Roads are much travelled on, and lye on a bad, or wet Foundation.—And what is to be done in that Case?

To which I answer, that the six Days Work have hitherto in most Parishes been so much neglected, and so slightly performed, that I believe, very few Parishes can truly say, from their own Experience,

periences, that the six Days Work, duly and properly attended to, and performed by all the Parishioners, liable by Law, to work in the Amendment of the Highways, with due Care, and Diligence, are not sufficient.—But suppose the Fact to be otherwise; and, that notwithstanding the six Days Work have been all faithfully and diligently performed, yet the Roads are in many Places too bad to travel on with Ease, or Safety.

In such a Case, I would recommend a Law to be made, that it shall be lawful for any neighbouring Justice of the Peace, upon the Complaint of any Person whatsoever, on Oath in Writing, specifying what Parts of the Roads are out of Repair, to summons the Surveyors to answer the said Complaint; and if, upon due Examination thereof, it shall appear, that there be immediate Occasion, and Necessity to repair such Roads; then the said Justice of Peace shall make an Order on the Surveyors of the public Roads to get them repaired within

' within eight Days, or so soon after, as the
 ' Nature of the Repairs will reasonably
 ' admit.—Which Order, the Surveyors
 ' shall be obliged to execute under 10 l.
 ' Penalty, *Toties Quoties* they offend; and
 ' for the doing thereof, they shall pro-
 ' cure Workmen, and all Things what-
 ' soever, which are needful for it.—And
 ' as soon as the Work is finished, the same
 ' Justice of Peace, who made the Order, or
 ' any neighbouring Justice of the Peace, on
 ' the Application of the Surveyors, shall
 ' be required to examine their Accounts
 ' upon Oath, touching the Charges they
 ' have been put to, and the Monies
 ' expended by them, on account of
 ' such Repairs; and shall order, and
 ' sign a Rate, to be made on the Pa-
 ' rish, to reimburse the said Surveyors;
 ' and in case the public Roads within
 ' any Parish, shall happen to be so much
 ' out of Repair, after St. *Luke's* Day, as
 ' to stand in need of such a Rate; and,
 ' the Surveyors cannot make it appear to
 ' the Satisfaction of any neighbouring Ju-
 ' stice of the Peace (who shall have Power,
 ' upon

' upon the Complaint of any Person what-
 ' soever given in Writing upon Oath, and
 ' specifying in what Parts of the Parish
 ' those Repairs are wanted, to examine the
 ' Surveyors without Oath, and the Testi-
 ' mony of Witnesses upon Oath) that the
 ' said Roads were in good and sufficient
 ' Repair, from *Lady Day* to *St. Luke's*
 ' *Day* next preceding the said Com-
 ' plaint; and, that the present Want of
 ' Repairs was occasioned by immoderate
 ' Rains, or Frosts, or other casual, and
 ' unforeseen Accident, or, that they have
 ' summoned, within their Year of Office,
 ' all the Parishioners, liable by Law, to
 ' work at the Repair of their Roads; and,
 ' that the six Days Work was actually
 ' done, and performed; or, the Defaul-
 ' ters presented to one, or more neigh-
 ' bouring Justices of the Peace, as afore-
 ' said; that then, and in such Case, they,
 ' and each of them the said Surveyors,
 ' being duly summoned, shall forfeit the
 ' Sum of 10 *l.* to be levied by Distress,
 ' &c. and to be applied for the Repair of
 ' the

' the Roads.—And every such Justice of
 ' Peace shall be obliged, under the Pe-
 ' nalty of 10*l.* *Toties Quoties* he offends,
 ' to be levied by Distress, &c. to re-
 ' ceive the Complaint, and tender the
 ' proper Oath to the Complainant, and
 ' the Witnesses; and to summons the
 ' Surveyors, and make such Order there-
 ' in, as the Nature and Justice of the
 ' Case shall require.

' But from this Account, and also
 ' from the Rate, an Appeal shall lye to
 ' the general Quarter-Sessions; and such
 ' reasonable Costs should be allowed, and
 ' given, as the Sessions shall think proper.
 ' But this Appeal shall not hinder
 ' the Surveyors from levying, and collect-
 ' ing the Rate in the mean Time.

This Method I take to be much better,
 than the obtaining a Rate, not exceeding
 6*s.* in the Pound, pursuant to the Statutes
 3 and 4 of *William and Mary*, Chap. 12.
 & 17. and 1 *George I.*—For such a Rate
 does, in some Parishes, raise by much too
 large

large a Sum to be trusted in the Hands of such Persons, as are generally chosen Surveyors. — And considering how easy such a Rate is obtained at the general Quarter-Sessions, very often, only on the Application of the Surveyors themselves, without any Consent appearing from the Majority of the Parishioners to such a Rate; I have been often surpris'd, that there is not a more frequent bad Use made of this Privilege, than there really is; especially, when one farther considers, that by the Statute in *George I.* the Surveyors may obtain such a Rate, whether the six Days work have been done, or not; which I take to be a very imprudent Law; not only for that it makes the obtaining of this Rate much easier than it could be done before, but also, because it is a great Encouragement to the Surveyors, to neglect the calling out of the Parish to do that Work; for, there are very few of them, but what had rather have a Sum in Hand to dispose of, than attend upon the Parishioners, when they are working on the Roads.

Besides,

Besides, this Rate does not to me seem proper to answer sudden Emergencies; for, suppose the Roads should be on a sudden damaged by Rains, or Frosts, or other Accidents, just after the *Michaelmas*, or *Christmas*-Sessions; no Rate can be obtained, much less Money raised by the Surveyors for the Repair of these Breaches, until a Quarter of a Year after the Time, that the Parishioners ought to repair them, which must certainly prove very inconvenient.

Upon the whole, I hope, that I have now proved both the Propositions I at first intended to make the Ground-work of this Treatise, to the Satisfaction of every candid and impartial Reader.—— And, have also offered such Amendments and Additions to our Laws, which are now in being for the Repair of the Highways, as will be thought to be useful and expedient.——If the taking away these Prosecutions by Presentments, Informations, or Indictments, should be attended with any public Inconveniencies (which I dare say will not be the Case)
the

the same Powers may be easily restored at any Time.

And having now only to add, that I think, it is also highly proper to ascertain, in the clearest Manner, ‘ what Persons
‘ shall find, and send out to the Repair of
‘ the Roads, any, and how many Carts,
‘ Draughts, or other Carriages ; and how
‘ many Cattle and Servants with them ;
‘ and also, what Persons shall find, and
‘ send out labouring’ Horses ; and how
‘ many for the said Purpose, and how
‘ many Servants, and what Tackle with
‘ them ; and also, what Number of la-
‘ bouring Horses, and Servants shall be
‘ deemed equal to the sending out a
‘ Cart, Draught, or other Carriage.—
‘ For, as these Doubts are not sufficient-
‘ ly settled, notwithstanding the Statutes
‘ of 3 and 4 of *Philip and Mary*, Chap. 8.
‘ § 2. 22 *Car. II.* Chap. 12. § 8, 17. and
‘ 8 of *William and Mary*, Chap. 29. § 5.
‘ many Disputes often happen in Parishes,
‘ Towns, &c. to the great Hindrance of
‘ the Repair of such Roads, as lye in the
‘ Parishes,

' Parishes, Towns, &c. where such Con-
' troversies arise.'

I shall conclude this Treatise, in the
Words, which *Horace* made use of to his
Friend *Numicus*.

Si quid novisti rectius istis,

Candidus imperti: Si non his utere mecum.

F I N I S

